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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,079	11/07/2001	Bruno Colin	BONN-059	7934

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EXAMINER

LUDLOW, JAN M

ART UNIT PAPER NUMBER

1743

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,079

Applicant(s)

COLIN, BRUNO

Examiner

Jan M. Ludlow

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/7/2001
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

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1. Claims 14, 19, 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. Claim 14 is unclear because it relates to the sample, which is not a positively recited element of the invention. In claim 19, "associated" is unclear—is a separate buffer supply in flow communication with the compartment(s) intended, or is buffer in one of the compartments? Claim 23 is unclear because it recites limitations in the alternative to the limitations of claim 20, and therefore fails to further limit claim 20. Or does applicant intend that one of the two deforming steps recited in claim 23 is performed in addition to the steps in claim 20? If so, the word "alternatively" is misplaced.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

4. A person shall be entitled to a patent unless --

5. (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 13-18, 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Nason.

Nason teaches an initial compartment 14 containing a sample of reagent (col. 2, lines 35-40) or a wetting agent such as saline (col. 6, line 37) in an ampoule 16. The initial compartment has a compressible circular sidewall (instant partition) and is connected at its lowest point to a narrower transfer channel 30 containing a strip 20 and connected to a second compartment 60, also having a compressible circular sidewall (see, e.g., figures 14, 15, in which compartments 14 and 60 are shown being manually squeezed). Alternatively the strip of claim 18 is formed by the sidewall of channel 30. With respect to claim 23, the limitations are recited in the alternative, and therefore the prior art need not teach these limitations in order to satisfy the claim.

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nason as applied to claims 13-18, 20-23 above, and further in view of Phillips et al.

Nason fails to teach a buffer.

Phillips teaches a device similar to Nason. In example 1, the ampoule contains buffer among the reagents (col. 6, line 22).

It would have been obvious to provide a buffer in the ampoule of Nason in order to provide buffered reagents for assay as taught by Phillips.

10. Claims 13-24 rejected under 35 U.S.C. 102(b) as being anticipated by Ullman (WO 94/26414).

Ullman teaches a device having first and second compartments, e.g., 16 and 20, 20 and 28, 44 and 50, 50 and 58, 72 and 78, 78 and 84, 84 and 96, 114 and 78 connected by narrower portions 18, 26, 52, 56, 80, 86, unlabeled between 90 and 96, and 108, respectively, all arranged as claimed. See Figures 1-6. Fluid passes sequentially from the top of the device to the bottom by, e.g., squeezing the deformable walls of the device (p. 14, lines 20-41, esp. 20-22 and 38-41). Buffer is present in the medium in one or more of the chambers (p. 12, line 31; p. 19, lines 35-40). The strip of claim 18 is formed by the wall(s) of the narrower portions. Mixing is caused by moving fluids back and forth between elements (p. 18, lines 33-45), e.g., by squeezing chambers alternatively to force fluids back and forth in accordance with the earlier teaching of causing flow by squeezing, satisfying the limitation of claim 23. Alternatively, with respect to claim 23, the limitations are recited in the alternative, and therefore the prior art need not teach these limitations in order to satisfy the claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (571) 272-1260. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jan M. Ludlow
Primary Examiner
Art Unit 1743

Jml
June 12, 2004